

By this Petition, the Petitioner challenges the rejection of his Appeal under Section 47 of the Maharashtra Regional And Town Planning Act, 1966.

2. A few facts involved in this Petition are as follows :

. A draft development plan was sanctioned for the City of Pune in 1966. Prior to that, the Municipal Commissioner of Respondent No.1 prescribed the regular line of the street in respect of the road adjacent to the Petitioner's property under Section 210 of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the "BPMC Act"). The development plan was later revised on 5th January 1987 and sanctioned by the Government of Maharashtra. The Petitioner was informed that his dilapidated structure which abutted the road was dangerous for the well being of persons using the road. The Petitioner was advised to restructure the same. A notice under Section 478 of the BPMC Act was issued to the Petitioner on 15th April 1989 by the Planning Authority of Pune City directing him to remove the illegal structure on his property. The Petitioner informed the Planning Authority that this structure was in fact the old and dilapidated construction and in order to avoid risk to human life, the Petitioner had sought permission to restructure the building. This permission was refused on 12th June 1989. The Architect of the Petitioner again applied to the Planning Authority on 12th July 1989 for

restructuring and replacing the floors of the building. The Petitioner did not receive any intimation regarding the application made. The Petitioner repeated his request a couple of times again, when the Planning Authority by its letter dated 8th April 1990 refused the permission.

3. A revised plan was submitted by the Petitioner. This proposal was not accepted by the Corporation since it was submitted without taking into account the road widening line of the street. This road widening line had been prescribed by the Municipal Commissioner as the regular line of street under Section 210 of the BMC Act in 1959. The first Respondent, therefore, refused permission to the Petitioner in respect of the building proposal by its letter dated 16th April 1993. An Appeal under Section 47 of the Maharashtra Regional And Town Planning Act, 1966 (hereinafter referred to as the "MRTP Act") was filed by the Petitioner on 3rd July 1993. The Appeal was dismissed on 20th January 1995, whereafter Writ Petition No.466 of 1996 was filed in this Court by the Petitioner. That Writ Petition came to be disposed off by this Court on 31st July 1998 and the Appeal was remanded for a fresh hearing. After remand, the Appeal filed under Section 47 of the BMC Act has again been dismissed.

4. Mr.Soni, learned Counsel appearing for the Petitioner, submits that although the regular line of the street was proposed in the year 1952 by following the procedure prescribed under Section 210 of the BPMC Act, the road widening proposal was dropped when the development plan was sanctioned in the year 1966 and in the revised development plan, sanctioned in 1987. According to him, the reservation for road widening had lapsed since the Planning Authority did not acquire the land within the regular line of the street as required under Section 213 of the BPMC Act within sixty days of the Petitioner's application for permission to construct the building. The learned Counsel submits that the very fact that the first Respondent did not acquire the Petitioner's land since 1952, indicates that the land was not required for road widening. Further, according to the learned Counsel, the impugned order reflects a violation of the principles of natural justice and fair play.

5. Section 210 of the BPMC Act empowers the Municipal Commissioner to prescribe a line on one or both sides of any public street which would be called the regular line of the street. The Commissioner is empowered also to widen any existing public street by prescribing such a line. Under Section 210(4)(b), no person can construct or reconstruct any structure within

the regular line of the street except with the written permission of the Commissioner. Section 211 of the BPMC Act mandates that whenever a building is proposed to be reconstructed, the Municipal Commissioner may require that the building be set back to the regular line of the street. The Petitioner's proposal to restructure the existing building was refused since the proposal did not take into consideration the regular line of the street. The proposal of the Petitioner for redeveloping and reconstructing the building also did not take into account the road widening line at the proposed site and, therefore, the proposal was rejected.

6. The contention of the learned Counsel for the Petitioner is that the regular line of street which has been prescribed under Section 210 of the BPMC Act in 1952, lapsed when the development plan was sanctioned in 1966 and the revised development plan was sanctioned in 1987. In our view, once a street line has been prescribed under Section 210 by the Commissioner, unless there is a specific change made by the Commissioner under Section 210 itself, it cannot be said that the regular line of the street lapsed merely because of the development plan being sanctioned. The development plans are sanctioned under the MRTTP Act. The power of the Commissioner under Section 210 is not circumscribed by the development plan. The Commissioner can always

widen any public street by changing the regular line of the street in accordance with the provisions of Section 210 of the BPMC Act. The development plan which is sanctioned under the MRTTP Act, need not include the lines prescribed by the Municipal Commissioner in exercise of his powers under Section 210 of the BPMC Act. Therefore, the submission of the learned Counsel is untenable.

7. The affidavit filed by the Corporation indicates that before a building permission is granted, the Corporation considers the regular line of the street prescribed under the BPMC Act as well as the road line shown in the development plan. The Municipal Commissioner can always require a proposed building to be set back to the regular line of the street before granting permission for construction. Therefore, the powers of the Municipal Commissioner under Section 210 of the BPMC Act are not curtailed by the MRTTP Act or the Development Plan.

8. The learned Counsel for the Petitioner relies on the Rules issued under Chapter X of the Development Plan and places specific reliance on Clause 10.2.3.8, where it is prescribed that the regular lines of the street in operation or as fixed from time to time under Section 210 of the BPMC Act, will be considered as if they are

incorporated in the revised draft development plan. Obviously, therefore, these regular lines of the street need not be depicted in the development plans once they have been prescribed.

9. The contention of the learned Counsel for the Petitioner that the principles of natural justice and fair play were not observed by the Appellate Authority is unsustainable. A perusal of the impugned order of the Appellate Authority indicates that the Petitioner was heard and his arguments and submissions have been considered by the Appellate Authority.

10. In our view, therefore, the Petition must fail. The Appeal has been decided rightly and in accordance with the principles of natural justice. Writ Petition dismissed. Interim orders, if any, vacated. Rule discharged.

(V.G. PALSHIKAR, Ag.C.J.)

(SMT.NISHITA MHATRE, J.)